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PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional) SUNMP006	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____September 28, 2006_____ Signature _____Kay Harlow_____ Typed or printed name _____Kay Harlow_____	Application Number 09/825,249	Filed April 2, 2001
	First Named Inventor. Sharma et al.	
	Art Unit 2192	Examiner Pham, Chrystine

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
      Note: No more than five (5) pages may be provided.

I am the

[ ] applicant/inventor.

[ ] assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

[X] attorney or agent of record.   19,711
Registration number _____

[ ] attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

_____ Signature

Chester E. Martine, Jr.
Typed or printed name

408 774-6908
Telephone number

September 28, 2006
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

[X] *Total of _____1_____ forms are submitted.

PATENT

REASONS FOR REVIEW

Claims 1, 4-9, 13-21, and 25 (as filed 4/20/06) are pending in the application. Reconsideration of the present case is respectfully requested in light of the following remarks. For brevity, only the primary arguments directed to exemplary independent claims 1, 9 and 18 are presented. Additional arguments, e.g., directed to the subject matter of the dependent claims, may be presented if and when the case proceeds to Appeal.

Summary of Arguments

The Examiner's rejections are clearly erroneous for at least the following reasons:

1. **A main memory in which an entity bean is stored, from which the state of the entity bean is obtained for replication, is not a memory in which the state of the bean is stored as a way of replicating the state of the entity bean, because a crash or other malfunction of that main memory (that stores the state in original and replication state memory sections) would lose both of the original and replication state memory sections, which would not be effective as replication.**

2. **The cite (Action page 2, L12 to page 3, L1-6) to the Apte reference (at C15, L8-18) is clearly erroneous, because the main memory in which the entity bean is stored and from which the state of the entity bean is obtained for replication, is not the memory in which the state of the bean is stored by Apte as a replication of the state of the entity bean.**

3. **A "container persisted" entity bean is a bean in which the container is in memory, the container stores the state of that entity bean, and the container manages the replication of that state by storing that state in a place other than the memory in which the container is stored.**

4. **The cite (Action page 3, L13-16) to Apte at C7, L30-50 is clearly erroneous in asserting a "container persisted" entity bean is a "memory replicated state management type", the reason for error is that the Apte storage in memory of the container (with the state of the entity bean) to only facilitate management of replication by the container, does not render the state of the entity bean a "memory" replicated state management type for purposes of replication of the entity bean.**

5. **The cite (Action page 4, L4-10) to Apte server 1202 (as being dedicated to container-managed EJBs 1208) included assertion that those EJBs are "memory replicated state management type". That assertion is clearly erroneous, and the reason for error is the same as that in Argument 4 above: the Apte storage in memory of the container (with the state of the entity bean EJB 1208) does not render the state of the entity bean a "memory" replicated state management type for purposes of replication of the entity bean.**

SUNMP006/ASP/CEM

6. The cite (Action page 12, last 3 lines onto page 13) to the Apte reference (at "see at least 1108, 1112 FIG. 11 & associated text") is clearly erroneous in asserting that in Apte the recoverable state is one of a disk replicated state management type and a memory replicated state management type, the reason for clear error being that the "Apte 1108 or 1112 or FIG. 11 or associated text" do not teach a disk replicated state management type and a memory replicated state management type.

7. The cite (Action page 10, lines 8-18) to Apte (at "see at least EJBs, protocol, particular server, mechanisms, persistence, container col. 7:25-55) is clearly erroneous in asserting that Apte teaches a particular state management unit dedicated to each of the two claimed replicated state management types (disk and memory).

8. A prima facie case has not been made out in the Action, because all elements of the claims have not been shown to be present in Apte (cited under Section 102), or in Apte combined with the other cited references.

9. If the Apte reference were in fact a proper primary reference for Section 102 and 103 purposes, the Apte reference should have been cited as a primary reference in the 8/12/04 Action and in the 5/16/05 Action (in each of which it was cited only as a secondary reference); instead of first citing Apte as a primary reference on 1/17/06 in the RCE stage of prosecution.

<u>Discussion of Arguments</u>
<u>Argument 1</u>. A main memory in which an entity bean is stored, from which the state of the entity bean is obtained for replication, is not a memory in which the state of the bean is stored as a way of replicating the state of the entity bean, because a crash or other malfunction of that main memory (that stores the state in original and replication state memory sections) would lose both of the original and replication state memory sections, which would not be effective as replication.

The above statement of Argument 1 indicates that it would be clearly wrong to consider that a main memory for data (e.g., the state of the bean) can also be the place in which that state data may properly be stored for replicating (or persisting) that state data. The basis for the error is that by any reasonable definition of persistence or replication, that process of replication requires further storage of the exemplary "state" data in a place that is not likely to crash at the same time as the main memory. Clearly, that further place for storing the replication data would not be main memory.

<u>Argument 2</u>. The cite (Action page 2, L12 to page 3, L1-6) to the Apte reference (at C15, L8-18) is clearly erroneous, because the main memory in which the entity bean is stored and from which the state of the entity bean is obtained for replication, is not the memory in which the state of the bean is stored by Apte as a replication of the state of the entity bean.

Please refer to Response dated 4/17/06, Section 2.2.A, page 15 and page 16, L1-15. Also, correction is here made of a typographical error on Response page 16, in that the remarks intended to state that referenced quote from Apte (starting at C17, L66) does not show both the disk <u>and</u> memory replication state management types (i.e., the "or" is changed to "and").

Respectfully, in the Action, the Examiner's response to Section 2.2.A (at the above Action page 2 cite) is clearly erroneous. The basis for clear error is that Apte clearly teaches (C17, L66 onto C18) that to persist the state of an EJB, that state must be

stored other than in main memory. Apte specifically teaches (C17, L65-C18, L1-2) that persisted storage is in "the back-end data store", shown in FIG. 12 as being separate from the container 1204. Thus, it is clear that the Apte main memory (that stores server 1202, FIG. 12) in which the container 1204 and entity bean 1208 are stored (and from which the state of the entity bean 1208 is obtained for replication), is not the memory in which the state of the entity bean is stored by Apte to replicate the state of the entity bean. The memory in which the state of the entity bean is stored to replicate the state of the entity bean is 1222, FIG. 12, back-end storage.

Argument 3. **A "container persisted" entity bean is a bean in which the container is in memory, the container stores the state of that entity bean, and the container manages the replication of that state by storing that state in a place other than the memory in which the container is stored.**
     The basis for this definition is that Apte clearly teaches (C15, L37-44) that an EJB container is a home for EJB components, and the container handles the state management of a bean. At C15, L42-44 a server can provide an implementation of a container. Such implementation is shown in Apte FIG. 12 within the box for server 1202. The existence of a server bean in main memory is shown by Apte at C15, L10-13, i.e., by "server bean to be temporarily displaced from memory". Again, the replication of state by storing that state in a place other than the memory in which the container is stored is the Apte 1222, FIG. 12, back-end storage.

Argument 4. **The cite (Action page 3, L13-16) to Apte at C7, L30-50 is clearly erroneous in asserting a "container persisted" entity bean is a "memory replicated state management type", the reason for error is that the Apte storage in memory of the container (with the state of the entity bean) to only facilitate management of replication by the container, does not render the state of the entity bean a "memory" replicated state management type for purposes of replication of the entity bean.**
     Respectfully, the logic on which the rejection is based is faulty. The state of the entity bean is specified by the bean itself (Apte C16, L63-65) by specifying which fields are to be replicated (retained). The specifying is by flags (C17, L63-64). The specifying is only either non-recoverable or recoverable, and does not include both disk and memory replication state management. If this logic were applied to a "container persisted" entity bean that is in a container stored on a <u>disk</u> of the host server, the logic would call the state of the entity bean "<u>disk</u>" replicated state management type. However, if this same logic were applied to the <u>same</u> "container persisted entity bean" that is in a container stored in <u>memory</u> of the host server, the logic would call the state of the entity bean "<u>memory</u>" replicated state management type. Thus, even though the state of the Apte entity bean is set by the bean itself, the logic would make the bean's state vary according to where the container is stored when it manages the state management of the bean. Respectfully, this is clearly erroneous.

Argument 5. **The cite (Action page 4, L4-10) to Apte server 1202 (as being dedicated to container-managed EJBs 1208) included assertion that those EJBs are "memory replicated state management type". That assertion is clearly erroneous, and the reason for error is the same as that in Argument 4 above: the Apte storage in memory of the container (with the state of the entity bean EJB 1208) does not render the state of the entity bean a "memory" replicated state management type for purposes of replication of the entity bean.**
     For clarity, the cites in Arguments 4 and 5 are discussed separately. Respectfully, the logic on which this rejection is based is faulty for the same reasons as in Argument 4.

              SUNMP006/ASP/CEM

Noting only the conclusion from Argument 4, even though the state of the Apte entity bean is set by the bean itself, the logic of the rejection would make the same bean's state vary according to where the container is stored when the container manages the state management of the bean. Respectfully, this is clearly erroneous.

Argument 6. **The cite (Action page 12, last 3 lines onto page 13) to the Apte reference (at "see at least 1108, 1112 FIG. 11 & associated text") is clearly erroneous in asserting that in Apte the recoverable state is one of a disk replicated state management type and a memory replicated state management type, the reason for clear error being that the "Apte 1108 or 1112 or FIG. 11 or associated text" do not teach a disk replicated state management type and a memory replicated state management type.**

Please refer to Response dated 4/17/06, Section 2.2.A, page 16, starting at the last paragraph and going onto page 17 (entire page).

Argument 7: **The cite (Action page 10, lines 8-18) to Apte (at "see at least EJBs, protocol, particular server, mechanisms, persistence, container col. 7:25-55) is clearly erroneous in asserting that Apte teaches a particular state management unit dedicated to each of the two claimed replicated state management types (disk and memory).**

Please refer to Response dated 4/17/06, page 24, Subsection 2.2.C.4: Discussion of The Cite To: "(see at least *EJBs, protocol, particular server, mechanisms, persistent, container* col. 7: 25-55)". The Action mailed 7/14/06 did not respond to the Subsection 2.2.C.4 remarks. In view of the remarks in the prior Response, respectfully, the further citation of the general descriptions at the C7 cite is clearly erroneous.

Argument 8: **A prima facie case has not been made out in the Action, because all elements of the claims have not been shown to be present in Apte (cited under Section 102), or in Apte combined with the other cited references.**

As a result of the clear errors identified in the above Arguments, the prima facie case is not made out with respect to the following exemplary claim limitations.

(a)   the recoverable state being one of a memory replicated state management type and a disk replicated state management type memory (claims 1 and 18).

(b)   providing state management based separately on each different state management type....replicating each one of the plurality of state objects in a state server, a different one of the state servers being provided for each different recoverable state management type (claim 1).

(c)   the partitioning and classifying operations (claim 9).

(d)   a state server dedicated to each state management type,...replicate a state management unit to the state server that is dedicated to the particular state management type of the state object... (claim 18).

<u>Argument 9</u>: **If the Apte reference were in fact a proper primary reference for Section 102 and 103 purposes, the Apte reference should have been cited as a primary reference in the 8/12/04 Action and in the 5/16/05 Action (in each of which it was cited only as a secondary reference); instead of first citing Apte as a primary reference on 1/17/06 in the RCE stage of prosecution.**

It is viewed as incongruous that the Apte reference, not considered as a primary reference in the first two Actions, would be newly considered as a primary reference after limitations were added to the claims in the RCE stage. The delay in citing Apte as a primary reference is, respectfully, evidence itself that the Examiner twice did not view the teachings of Apte as being so pertinent to the claimed invention as to be a primary reference. Further, in view of the directive of 37 CFR 1.104 (c)(2) that the Examiner "cite the best references at" her command, the fact that these teachings of Apte were twice not considered to be the "best" (i.e., primary) is another indication of the clear error of the present assertions of Apte under Sections 102 and 103 against the present more detailed claims.

In view of the foregoing, Applicants respectfully submit that all of the pending claims are in condition for allowance. Applicants kindly request that the Office withdraw the rejections of claims 1, 4-9, 13-21, and 25, and issue a Notice of Allowance.

If the Office has any questions concerning the present Request, the undersigned can be reached at (408) 774-6908. If any additional fees are due in connection with filing this Request, the Commissioner is authorized to charge Deposit Account No. 50-0805 (Order No. SUNMP006). Enclosed herewith is the associated Notice of Appeal, payment of the appeal fee, and Return Receipt Postcard.

Respectfully submitted,
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